ORIGINAL

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FILED

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAYNE ENGLANDER, an individual, and MITCH ENGLANDER, an individual, on behalf of themselves, the general public, all others similarly situation, and as owners of Sparky and Bailey,

Plaintiffs,

vs.

MENU FOODS INCOME FUND, an unincorporated association, MENU FOODS OPERATING TRUST, an unincorporated association, MENU FOODS LIMITED PARTNERSHIP, a limited partnership organized under Ontario law, MENU FOODS ACQUISITION, INC., an Ontario, Canada corporation, MENU FOODS LIMITED, a Ontario, Canada corporation, MENU FOODS HOLDINGS, INC., a Delaware corporation, MENU FOODS, INC., a New Jersey corporation, MENU FOODS MIDWEST CORPORATION, a Delaware corporation, and DOES 1 through 100, Inclusive,

Defendants.

CASE NO. CV 07-2904

NOTICE OF REMOVAL OF ACTION; DEMAND FOR JURY TRIAL [28 U.S.C. § 1441(a)]

[FILED CONCURRENTLY WITH NOTICE OF REMOVAL]

DOCKETED ON CM
MAY 15 2007
BY

Action Filed: April 5, 2007

Dockets.Justia.com

PLEASE TAKE NOTICE that defendants, MENU FOODS INCOME FUND, MENU FOODS OPERATING TRUST, MENU FOODS LIMITED PARTNERSHIP, MENU FOODS ACQUISITION, INC., MENU FOODS LIMITED, MENU FOODS HOLDINGS, INC., MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION (hereinafter collectively referred to as "MENU FOODS" or "Defendants"), pursuant to 28 U.S.C. §§ 1441 and 1446, file this Notice of Removal (hereinafter "Notice") of this action from the Superior Court of the State of California for the County of Los Angeles to the United States District Court for the Central District of California, Los Angeles (Western) Division. The grounds for removal are as follows:

I. INTRODUCTION

1. Plaintiffs, JAYNE ENGLANDER, an individual, and MITCH ENGLANDER, an individual, on behalf of themselves, the general public, all others similarly situation, and as owners of Sparky and Bailey (hereinafter collectively referred as "Plaintiffs"), commenced this products liability action in the Superior Court of the State of California, County of Los Angeles, entitled Plaintiffs, JAYNE ENGLANDER, an individual, and MITCH ENGLANDER, an individual, on behalf of themselves, the general public, all others similarly situation, and as owners of Sparky and Bailey, vs. MENU FOODS INCOME FUND, an unincorporated association, MENU FOODS OPERATING TRUST, an unincorporated association, MENU FOODS LIMITED PARTNERSHIP, a limited partnership organized under Ontario law, MENU FOODS ACQUISITION, INC., an Ontario, Canada corporation, MENU FOODS LIMITED, a Ontario, Canada corporation, MENU FOODS HOLDINGS, INC., a Delaware corporation, MENU FOODS, INC., a New Jersey corporation, MENU FOODS MIDWEST CORPORATION, a Delaware corporation, and DOES 1 through 100, Inclusive, Case No. BC 369097, on April 5, 2007. Plaintiffs allege that their pets (dogs) became ill upon consuming pet food manufactured and distributed by defendants. Plaintiffs further claim that they sustained compensatory damages, including veterinarian

bills and related expenses, as a result of their pets' illnesses. A true and correct copy of the Complaint is attached hereto and incorporated by reference as **Exhibit A.**

2. MENU FOODS has yet to be served with a copy of the Summons and the Complaint, however, makes this Notice having received notice of this action. Pursuant to 28 U.S.C. § 1441, this Notice of Removal is timely filed.

3. As more fully set forth below, this is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332(d)(2), and this action is removable under 28 U.S.C. § 1441, because it is a civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action between citizens of different States. Therefore, pursuant to 28 U.S.C. §1441(a), the Defendants may remove this action to this Court.

II. THIS COURT HAS SUBJECT MATTER JURISDICTION

A. The Amount in Controversy Requirement Exceeds $5,000,000.

4. It is apparent from the face of the Complaint that the plaintiffs seek recovery of an amount in excess of $5,000,000, exclusive of costs and interest. Plaintiffs filed this class action on behalf of themselves as individuals and similarly situated individuals of the State of California, who purchased pet food manufactured or produced by defendants, including various brands of allegedly tainted pet food for dogs and cats, and which was recalled in the year 2007. Plaintiffs allege that they have sustained compensatory damages in the form of veterinarian bills and related expenses, as a result of their pets' illnesses. In addition, plaintiffs allege that countless pets have died, and thousands of pets throughout the State of California have experienced kidney failure and/or suffered other serious adverse health consequences, and have required extensive medical care, as a result of consuming the affected pet food. Plaintiffs acknowledge that the members of the putative class are numerous, and although the entire class is unknown to plaintiffs at this time, it is estimated that the entire class is greater than 1,000 individuals and involves close to 60 million cans or pouches of pet food. Plaintiffs'

prayer for relief seeks contract damages; general damages; special damages, including past and future veterinary expenses, burial expenses, and loss of earnings; disgorgement of all profits; punitive damages; restitution based on defendants' alleged unjust enrichment; constructive trust; and attorney fees, on behalf of themselves and all the members of the class. Further, nowhere in the Complaint do the plaintiffs limit the amount in controversy to less than $5,000,000. See **Exhibit A**.

5. "Where the class action complaint does not specify the amount of damages sought, the removing defendant must prove by a preponderance of the evidence that the amount in controversy requirement has been met." Davis v. Chase Bank U.S.A., 453 F.Supp.2d 1205, 1208 (C.D.Cal. 2006). Under this standard, "the defendant must provide evidence that is 'more likely than not' that the amount in controversy satisfies the federal diversity jurisdictional amount requirement." Davis, 453 F.Supp.2d at 1208, citing Abrego Abrego v. The Dow Chemical Co., 443 F.3d 676, 683 (9th Cir. 2006).

6. Based on plaintiffs' own allegations that MENU FOODS, alone, has issued what is purported to be one of the largest, if not the largest, recalls (approximately 60,000,000 units) of products in the pet food industry's history, and the types of damages claimed in the Complaint, it is apparent that the amount in controversy exceeds $5,000,000, exclusive of costs and interest.

7. Moreover, there are numerous pending class actions against MENU FOODS in various federal judicial districts in which the named plaintiffs allege that jurisdiction exists under 28 U.S.C. § 1332(d)(2). There is no reason to believe that the damages or amount in controversy, exclusive of costs and interests, claimed by the plaintiffs in this civil action will be less than those alleged in the pending federal cases.

8. The defendants have, therefore, met their burden of showing a reasonable probability that the amount in controversy satisfies the federal jurisdictional amount.

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B. Complete Diversity of Citizenship Exists.

9. There is complete diversity of citizenship between the plaintiffs and the defendants in this action. Diversity in a class action is established when "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

10. According to the Complaint, the named plaintiffs are citizens of the State of California.

11. Defendant Menu Foods Income Fund is a Canadian income fund with its principal executive offices located at 8 Falconer Drive, Streetsville, Ontario, Canada L5N 1B1. Defendant Menu Foods Operating Trust is a Canadian trust with its principal executive offices located at 8 Falconer Drive, Streetsville, Ontario, Canada L5N 1B1. Defendant Menu Foods Limited Partnership is a Canadian partnership with its principal executive offices located at 8 Falconer Drive, Streetsville, Ontario, Canada L5N 1B1. Defendant Menu Foods Acquisition Inc. is a Canadian corporation with its principal executive offices located at 8 Falconer Drive, Streetsville, Ontario, Canada L5N 1B1. Defendant Menu Foods Limited is a Canadian corporation with its principal executive offices located at 8 Falconer Drive, Streetsville, Ontario, Canada L5N 1B1. Defendant Menu Foods Holdings, Inc. is a Delaware corporation with its principal executive offices at 9130 Griffith Morgan Lane, Pennsauken, New Jersey 08110. Defendant Menu Foods, Inc. is a New Jersey corporation with its principal executive offices located at 9130 Griffith Morgan Lane, Pennsauken, New Jersey 08110. Defendant Menu Foods Midwest Corporation is a Delaware corporation with its principal executive offices located at P.O. Box 1046, 1400 East Logan Avenue, Emporia, Kansas 66801. Menu Foods Midwest Corporation is a wholly owned subsidiary of Menu Foods, Inc. Pursuant to 28 U.S.C. § 1332(c)(1), "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. §1332(c)(1). Thus, MENU FOODS is deemed to be a citizen of the state listed above, which is not the State of California.

12. The "DOE" defendants are wholly fictitious and sham parties against whom no relief is, or could be, sought in this action. Pursuant to 28 U.S.C. § 1441(a), this Court should disregard the citizenship of any defendant sued under this fictitious name. Accordingly, it is not necessary that any parties join in this Notice of Removal of Action.

13. This case should be removed to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1332 and 1441, because: (1) the plaintiffs are citizens of the State of California; (2) MENU FOODS is not a citizen of the State of California; and (3) the amount in controversy exceeds $5,000,000, exclusive of costs and interest.

III. PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

14. This Notice of Removal is timely according to 28 U.S.C. § 1446(b).

15. The defendants, in good faith, believe that the amount in controversy exceeds $5,000,000, exclusive of costs and interest, and complete diversity of citizenship exists.

16. The United States District Court for the Central District of California embraces the county in which the state court action is now pending. Therefore, this action is properly removed to the Central District of California pursuant to 28 U.S.C. § 93(a)(1).

17. Pursuant to 28 U.S.C. §1446(d), the defendants are filing written notice of this removal to all adverse parties and will file a copy of the notice with the clerk of the State court in which this action is currently pending.

WHEREFORE, the defendants, MENU FOODS INCOME FUND, MENU FOODS OPERATING TRUST, MENU FOODS LIMITED PARTNERSHIP, MENU FOODS ACQUISITION, INC., MENU FOODS LIMITED, MENU FOODS HOLDINGS, INC., MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION, respectfully move this action from the Superior Court of the State of California for the County of Los Angeles to the United States District Court for the

Central District of California pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, defendants, MENU FOODS INCOME FUND, MENU FOODS OPERATING TRUST, MENU FOODS LIMITED PARTNERSHIP, MENU FOODS ACQUISITION, INC., MENU FOODS LIMITED, MENU FOODS HOLDINGS, INC., MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION, hereby demand trial by jury in this action.

DATED: May 4, 2007, **MURCHISON & CUMMING, LLP**

By: [signature]
JEAN M. LAWLER
GINA E. OCH
Attorneys for Defendants,
MENU FOODS INCOME FUND, MENU FOODS OPERATING TRUST, MENU FOODS LIMITED PARTNERSHIP, MENU FOODS ACQUISITION, INC., MENU FOODS LIMITED, MENU FOODS HOLDINGS, INC., MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION

SHORT TITLE: Englandor, et al. v. Menu Foods, et al.	CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus	2., 8.
		☐ A6152 Writ - Mandamus on Limited Court Case Matter	2.
		☐ A6153 Writ - Other Limited Court Case Review	2.
	Other Judicial Review (39)	☐ A6150 Other Writ / Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment	2., 9.
		☐ A6160 Abstract of Judgment	2., 6.
		☐ A6107 Confession of Judgment (non-domestic relations)	2., 9.
		☐ A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
		☐ A6112 Other Enforcement of Judgment Case	2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only	1., 2., 8.
		☐ A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		☐ A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment	2., 3., 9.
		☐ A6123 Workplace Harassment	2., 3., 9.
		☐ A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		☐ A6190 Election Contest	2.
		☐ A6110 Petition for Change of Name	2., 7.
		☐ A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
		☐ A6100 Other Civil Petition	2., 9.

SHORT TITLE: Englander, et al. v. Menu Foods, et al.	CASE NUMBER

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE			ADDRESS:
☐1. ☒2. ☐3. ☐4. ☐5. ☐6. ☐7. ☐8. ☐9. ☐10.			15233 Valleyheart DR
CITY: Sherman OAKS	STATE: Ca	ZIP CODE: 91403	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Los Angeles Superior Court courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: April 5, 2007

(SIGNATURE OF ATTORNEY/FILING PARTY)
David C. Parisi

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 South Grand Avenue, 9th Floor, Los Angeles, California 90017-4613.

On May 4, 2007, I served true copies of the following document described as **NOTICE OF REMOVAL OF ACTION; DEMAND FOR JURY TRIAL** on the interested parties in this action as follows:

David C. Parisi, Esq.
Suzanne Havens Beckman, Esq.
PARISI & HAVENS LLP
15233 Valleyheart Drive
Sherman Oaks, CA 91403
Tele: (818) 990-1299
Fax: (818) 501-7852
Plaintiffs, Jayne Englander, et al.

BY MAIL: I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Murchison & Cumming's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 4, 2007, at Los Angeles, California.

[signature]
MARJORIE K. DE JOHNETTE

David C. Parisi, Esq. (162248)
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FILED
LOS ANGELES SUPERIOR COURT
APR 05 2007
JOHN A. CLARKE, CLERK
BY RUGENA LOPEZ, DEPUTY

Case assigned to Judge

Attorneys for plaintiffs Mitch and Jayne Englander, on behalf of themselves, the general public, all others similarly situated, and as owners and guardians of Sparky and Bailey

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BC369097

JAYNE ENGLANDER, an individual, and MITCH ENGLANDER, an individual, on behalf of themselves, the general public, all others similarly situated, and as owners and guardians of Sparky and Bailey, Plaintiffs, MENU FOODS INCOME FUND, an unincorporated association; MENU FOODS OPERATING TRUST, an unincorporated association; MENU FOODS LIMITED PARTNERSHIP, a limited partnership organized under Ontario law; MENU FOODS ACQUISITION INC., an Ontario, Canada, corporation; MENU FOODS LIMITED, a Ontario, Canada, corporation; MENU FOODS HOLDINGS, INC., a Delaware corporation; MENU FOODS, INC., a New Jersey corporation; MENU FOODS MIDWEST CORPORATION, a Delaware corporation; and DOES 1-100, inclusive, Defendants.	CASE NO.: **CLASS ACTION COMPLAINT FOR:** (1) Breach of Contract; (2) Negligence; (3) Negligence *Per Se*; (4) Trespass to Chattels; (5) Intentional Infliction of Emotional Distress; (6) Fraudulent Concealment; (7) Strict Products Liability; (8) Breach of Warranties; (9) Violation of Consumer Legal Remedies Act; (10) Violation of Bus. & Prof. Code sec. 17500, *et seq.*; (11) Violation of Bus. & Prof. Code sec. 17200, *et seq.*

Plaintiffs Mitch and Jayne Englander ("Plaintiffs"), on behalf of themselves, the general public, all others situated, and as owners and guardians of Sparky and Bailey, against defendants Menu Foods Income Fund, Menu Foods Operating Trust, Menu Foods Limited Partnership, Menu Foods Acquisition Inc., Menu Foods Limited, Menu Foods Holdings, Inc., Menu Foods, Inc., Menu Foods Midwest Corporation, and Does 1 through 100, inclusive, (collectively "Menu Foods"), allege as follows:

NATURE OF THE ACTION

1. This class action is brought on behalf of all pet owners/guardians residing in California who purchased pet food which was manufactured or produced by defendants and which was recalled by defendants in the year 2007.

2. Two of those pets are Sparky and Bailey. Mitch and Jayne Englander are/were Sparky's and Bailey's owners and guardians. Sparky was a golden retriever who consumed pet food manufactured by defendants, suffered renal failure, and had to be euthanized on March 13, 2007, in order to relieve his pain and suffering. Bailey is also a golden retriever who consumed pet food manufactured by defendants and suffered kidney problems. While Bailey consumed the poisoned pet food up through March 17, 2007 -- because Menu Foods delayed a recall -- Bailey has survived and is under the care of a veterinarian. Bailey is expected to recover, though whether partially or fully is not known, from his poisoning.

3. Bailey and Sparky were not alone. There is nearly one pet for every two Americans. There are approximately 124 million dogs and cats living in American households. And, as plaintiffs and defendants know, to many the loss of a dog or cat leaves memories of loyalty and devotion seldom equaled. "We have come a long way from the old common law concept of a dog not even being considered property. Not only is he more than property today, he is the subject of sonnets, the object of song, the symbol of loyalty. Indeed, he is man's best friend." (*Katsaris v. Cook* (1986) 180 Cal.App.3d 246 (concurring and dissenting opinion by Justice Sabraw).)

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4. Unfortunately, for California's pets, Menu Foods, one of the largest manufacturers of pet food in California, does not see pets in the same way as its customers. As alleged herein, the Menu Foods defendants have conducted themselves in a manner which shows contempt for Plaintiffs, the Plaintiff Class, including Sparky and Bailey, and the thousands of other pets who consumed poisoned pet food manufactured by Menu Foods. As alleged more fully below, defendants now admit that they knew at least as early as March 6, 2007, that the pet food at issue in this lawsuit was killing and injuring pets across the nation. (It is likely, however, that Menu Foods knew much earlier of the dangerous nature of the pet food.) Nonetheless, defendants failed to initiate a recall of the pet food until they could keep the poisoned food a secret no longer when their largest corporate customer initiated its own recall. Had the Menu Foods defendants recalled the pet food earlier, and had the Menu Foods defendants properly tested pet food before it was sold to the general public, Sparky and Bailey would not have been poisoned, nor would have thousands of other pets across the Country. That the Menu Foods defendants do not place value on dogs and cats is clear -- in the course of recent press releases and press conferences, defendants have admitted that they test pet food which they believe to be dangerous to the health of dogs and cats, on dogs and cats themselves, as opposed to other more humane methods of testing pet food.

5. Due to the misconduct of Menu Foods, Sparky was killed, Bailey was severely injured, hundreds if not thousands of pets across California have been killed or seriously injured, and Plaintiffs and those similarly situated have been harmed.

VENUE AND JURISDICTION

6. This court may exercise jurisdiction over this case and these parties under Code of Civil Procedure section 410.10. This is a court of general jurisdiction, and the amount in controversy exceeds this court's jurisdictional minimum. Plaintiffs are California residents. Plaintiff purchased the pet food at issue in the County of Los Angeles.

7. Venue is proper under Code of Civil Procedure sections 395(a) and 395.5. Many of the acts herein alleged took place in the County of Los Angeles, State of

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California, within the venue of this Court. Venue is proper in the County of Los Angeles because plaintiffs are located in the County of Los Angeles, Sparky and Bailey were poisoned in the County of Los Angeles, and, pursuant to Local Rule 2.0 (b), this is the type of action that must be filed in the Central District.

8. All allegations in this complaint are based on information and belief and/or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

THE PARTIES

9. Jayne Englander is and at all relevant times mentioned herein was, an individual residing within the County of Los Angeles, State of California. Ms. Englander brings this action on behalf of herself, the general public, all others similarly situated, and as owner and guardian of Sparky and Bailey.

10. Mitch Englander is and at all relevant times mentioned herein was, an individual residing within the County of Los Angeles, State of California. Mr. Englander brings this action on behalf of himself, the general public, all others similarly situated, and as owner and guardian of Sparky and Bailey.

11. Sparky was born in approximately March 1994. Bailey was born in approximately September 1996. Sparky and Bailey are golden retrievers. Sparky was euthanized on or about March 12, 2007 due to poisoning by defendants.

12. Defendant Menu Foods Income Fund is, based on information and belief, an unincorporated open-ended trust or association established under Ontario, Canada, law pursuant to a declaration of trust dated March 25, 2002. The Fund maintains its headquarters at 8 Falconer Drive, Streetsville, Ontario L5N 1B1. The Fund owns all the other defendants through the Menu Foods Operating Trust.

13. Defendant Menu Foods Operating Trust is, based on information and belief, an unincorporated open-ended trust or association established under Ontario, Canada, law pursuant to a declaration of trust dated May 22, 2002. Menu Foods Operating Trust maintains its headquarters at 8 Falconer Drive, Streetsville, Ontario L5N 1B1. Menu Foods

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Operating Trust owns the remaining defendants through the Menu Foods Limited Partnership.

14. Defendant Menu Foods Limited Partnership is a limited partnership organized under Ontario, Canada, law. Menu Foods Limited Partnership maintains its offices at 8 Falconer Drive, Streetsville, Ontario L5N 1B1. Menu Foods Limited Partnership owns the remaining defendants through Menu Foods Acquisition Inc.

15. Defendant Menu Foods Acquisition Inc. is, on information and belief, an Ontario, Canada, corporation which maintains its headquarters at 8 Falconer Drive, Streetsville, Ontario L5N 1B1. Menu Foods Acquisition Inc. owns the remaining defendants through Menu Foods Limited.

16. Defendant Menu Foods Limited is, on information and belief, an Ontario, Canada, corporation which maintains its headquarters at 8 Falconer Drive, Streetsville, Ontario L5N 1B1. Menu Foods Limited owns the remaining defendants through Menu Foods Holdings, Inc.

17. Defendant Menu Foods Holdings, Inc. is a Delaware corporation which owns Menu Foods, Inc., Menu Foods Midwest Corporation, and Menu Foods South Dakota Inc.

18. Defendant Menu Foods, Inc. is a New Jersey corporation. Based on information and belief, Menu Foods, Inc. owns and operates a pet food manufacturing plant in Pennsauken, New Jersey.

19. Defendant Menu Foods Midwest Corporation is a Delaware corporation with, based on information and belief, its principal place of business in Kansas. Based on information and belief, Menu Foods Midwest Corporation operates a pet food manufacturing plant and office space in Emporia, Kansas.

20. Each defendant owns, controls, and/or is related to or affiliated with the pet food manufacturing plants located in the United States and from which poisoned pet food was processed and/or manufactured.

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21. Defendants maintained an interactive website located at www.menufoods.com on which defendants advertised and promoted pet food throughout the United States, including in California.

22. Plaintiffs are currently ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does 1 through 100, inclusive, and therefore, sue such defendants by such fictitious names. Plaintiffs will seek leave to amend this complaint to allege the true names and capacities of said fictitiously named defendants when their true names and capacities have been ascertained. Plaintiffs are informed and believe and based thereon allege that each of the fictitiously named Doe defendants is legally responsible in some manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiffs.

23. Plaintiffs are informed and believe and based thereon allege that all defendants, including the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators, ostensible agents, partners and/or joint venturers and employees of all other defendants, and that all acts alleged herein occurred within the course and scope of said agency, employment, partnership, and joint venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge, consent, authorization and ratification of their co-defendants; however, each of these allegations are deemed "alternative" theories whenever not doing so would result in a contraction with the other allegations.

24. All defendants, including Does 1 through 100, are collectively referred to as "defendants" or "Menu Foods."

25. Whenever this complaint makes reference to any act of defendants, the allegations shall be deemed to mean the act of those defendants named in the particular cause of action, and each of them, acting individually, jointly and severally, unless otherwise alleged.

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FACTS

26. Menu Foods manufactures pet food for 17 of the top 20 North American retailers, as well as leading pet specialty retailers in North America. Menu Foods is also a contract manufacturer for five of the top six branded pet food companies, as well as many other branded pet food companies.

27. Menu Foods represents to the general public on its website that it "is the leading North American private-label/contract manufacturer of wet pet food products sold by supermarket retailers, mass merchandisers, pet specialty retailers and other retail and wholesale outlets." As of 2006, Menu Foods represented that it "currently produces more than one billion containers per year."

28. According to the FDA, Menu Foods manufactured "cuts and gravy" style pet food between December 3, 2006 and March 6, 2007 at one or more of their facilities. According to Menu Foods, this pet food manufactured between December 3, 2006 and March 6, 2007, was contaminated. The exact contaminant is unknown as of this time.

29. On March 23, 2007, the New York State Food Laboratory identified aminopterin as a toxin present in pet food samples from Menu foods which had been manufactured between December 3, 2006 and March 6, 2007. According to the New York State Department of Agriculture & Markets, "Aminopterin, a derivative of folic acid, can cause cancer and birth defects in humans and can cause kidney damage in dogs and cats. Aminopterin is not permitted for use in the United States." The Food Laboratory "identified aminopterin in the pet food samples at a level of at least 40 parts per million."

30. Aminopterin is a chemical that is identified in Title 22, California Code of Regulations ("CCR") section 12000 that is known to the State of California to cause cancer or reproductive toxicity. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.5, *et seq.* (hereafter "Proposition 65"), "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ."

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31. According to the U.S. Environmental Protection Agency, aminopterin is very dangerous and for "emergency situations, [a person should] wear a protective pressure, pressure-demand, full facepiece self-contained breathing apparatus (SCBA) or pressure-demand supplied air respirator with escape SCBA and a fully-encapsulating, chemical resistant suit."

32. According to the FDA, melamine and melamine byproducts were found in wheat gluten in certain pet food manufactured by Menu Foods. Based on information and belief, this pet food was manufactured between December 3, 2006 and March 6, 2007.

33. Melamine is a chemical used in fertilizers in Asia but not allowed in the United States. Stephen Sundlof, director of the U.S. Food and Drug Administration's Center for Veterinary Medicine, said during a press conference on March 30, 2007, that "[t]he association between the melamine in the kidneys and urine of cats that died and the melamine in the food they consumed is undeniable."

34. Based on information and belief, Menu Foods received complaints about kidney failure and deaths of pets from pet owners and guardians as early as February 20, 2007. Menu Foods dismissed these complaints.

35. Based on information and belief, on February 27, 2006, Menu Foods then forced between 40 to 50 dogs and cats to consume this tainted pet food which was manufactured between December 3, 2006 and March 6, 2007. Menu Foods has now admitted that they killed, with this food, 15 cats and one dog. The first death occurred on March 2, 2007.

36. Based on information and belief, some time prior to March 6, 2007, Menu Foods realized that the wheat gluten it was using in pet food was contaminated and could kill family pets who consumed the food. On March 6, 2007, Menu foods made a business decision to stop using its new supplier of wheat gluten, which supplier began to supply wheat gluten on December 3, 2006, and switch to another supplier.

37. Menu Foods then made a calculated decision. Menu Foods waited to see if the dogs and cats in the United States that would die because of contaminated pet food

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would be traced back to Menu Foods. Based on information and belief, Menu Foods chose to notify the FDA, the public and its retailers of the contaminated pet food on March 16, 2007, not out of concern for companion pets across the Nation, but because Menu Foods could no longer keep the deaths, and tainted pet food, a secret. Menu Foods initiated a recall of the pet food, and alerted the FDA, only after its largest customer, P&G Pet Care, initiated its own recall.

38. Plaintiffs and the Plaintiff Class purchased contaminated pet food which was manufactured by Menu Foods between December 3, 2006 and March 6, 2007.

39. Plaintiffs Mitch and Jayne Englander unknowingly fed poisoned pet food to Sparky and Bailey. The pet food was manufactured by Menu Foods and was labeled by Iam's. As a result of the poisoned pet food, Sparky's and Bailey's kidneys were severely damaged. According to their veterinarian, Sparky developed renal failure and could not be saved. Sparky euthanized on March 13, 2007, so as not to prolong his suffering. Bailey, though his kidney's have been damaged, is doing better. Bailey currently has a bladder infection which, based on information and belief, was caused by the poisoned pet food. Bailey is currently under the care of a veterinarian.

40. Based on information and belief, the poisoned pet food causes renal failure, which results in loss of appetite, lethargy, vomiting, diarrhea and/or a slow painful death for the cats and dogs who consumed the pet food. Reports exist that nearly 2,800 pets have been killed by the poisoned pet food. The mortality rate may be as high as 17 percent for those pets who consumed the food.

CLASS ACTION ALLEGATIONS

41. Plaintiffs seek relief not only for themselves but for all others in California similarly situated. (The members of the plaintiff class are collectively referred to as the "Plaintiff Class.") Plaintiffs will ask the court to certify the following class under Code of Civil Procedure section 382 and Civil Code section 1781:

> All pet owners/guardians residing in the California who purchased pet food which was manufactured or produced by

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defendants and which was recalled by defendants in the year 2007.

42. Excluded from the class are defendants, any entity in which defendants have a controlling interest or which has a controlling interest in defendants, and defendants' legal representatives, predecessors, successors, assigns, and employees. Also excluded from the class are the judge and staff to whom this case is assigned, and any member of the judge's immediate family.

43. Plaintiffs reserve the right to revise the class definition based on facts learned during discovery.

44. Plaintiffs are members of the class that they seek to represent.

45. Plaintiffs do not know the exact number of Class members, but Plaintiffs believe, based on the recall of close to 60 million cans and pouches of pet food, that the Class members are sufficiently numerous such that their individual joinder is impracticable.

46. The common legal and factual questions, which do not vary from class member to class member and which my be determined without reference to individual circumstances of any class member, include, but are not limited to, the following:

(a) Whether defendants failed to take reasonable steps to keep pet food safe;

(b) Whether defendants failed to recall the tainted pet food when they knew or should have known the pet food was tainted;

(c) Whether defendants have destroyed evidence in an effort to limit their exposure in a lawsuit;

(d) Whether defendants violated the Pure Pet Food Act of 1969;

(e) Whether defendants' conduct entitles Plaintiffs and the Plaintiff Class to exemplary damages pursuant to California Civil Code section 3340;

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(f) Whether defendants concealed the existence of the tainted pet food prior to the time defendants initiated the recall;

(g) Whether the alleged conduct violates Business & Professions Code §§ 17200, *et seq.*;

(h) Whether the alleged conduct violates the Consumer Legal Remedies Act;

(i) Whether the alleged conduct violates the False Advertising Act;

(j) The nature and extent of damages and other remedies to which defendants' misconduct entitles Plaintiffs and the Plaintiff Class; and

(k) Whether Plaintiffs and the Plaintiff Class are entitled to the injunctive and equitable relief requested herein.

47. These common questions and others predominate over questions, if any, that affect only individual Plaintiff Class members.

48. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by the class members. Similar or identical breach of contract, statutory and common law violations, deceptive business practices, and misconduct are involved. Individual questions, if any, pale by comparison to the numerous common questions that dominate.

49. The injuries sustained by the class members flow, in each instance, from a common nucleus of operative facts. In each case defendants manufactured and/or produced pet food which was poisoned and could not be safely consumed by pets.

50. The class members have been damaged by defendants' misconduct.

51. Plaintiffs' claims are typical of the claims of the proposed class members.

52. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs' claims are the same as, and not in conflict with, the other class members. Plaintiffs are familiar with the facts that form the basis of the class members' claims.

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53. Plaintiffs have retained counsel competent and experienced in class action litigation and intend to prosecute this action vigorously. Plaintiffs' counsel has successfully prosecuted complex actions including class actions. Plaintiffs and plaintiffs' counsel will fairly and adequately protect the interests of the class members.

54. A class action is superior to other available means for the fair and efficient adjudication of this controversy, because individual litigation of the class members' claims is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the class members is likely significant, the individual damages incurred by each class member are too small to warrant the expense of individual suits. As such, it would be virtually impossible for the class members to seek redress on an individual basis. Even if the class members themselves could afford such individual litigation, the court system could not.

55. Individual litigation of the legal and factual issues raised by defendants' misconduct would increase delay and expense to all parties and to the court system. Prosecution of separate actions would create the risk of inconsistent, varying or contradictory adjudications, and would magnify the delay expense to all parties and the court system resulting from multiple trials of the same issues. A class action provides the benefit of a single, uniform adjudication, economies of scale, and comprehensive supervision by a single court.

56. If appropriate, Plaintiffs may ask the Court to incorporate subclasses of plaintiffs, defendants, or both, in the interest of justice and judicial economy.

57. Plaintiffs bring this action as a private attorney general, and to vindicate and enforce an important right affecting the public interest. Plaintiffs are therefore entitled to an award of attorneys' fees under Code of Civil Procedure §1021.5 for bringing this action.

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FIRST CAUSE OF ACTION
(Breach of Contract)
(By Plaintiffs and the Plaintiff Class against all defendants)

58. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

59. Plaintiffs and the Plaintiff Class purchased pet food from defendants. Plaintiffs and the Plaintiff Class reasonably understood at all relevant times that the pet food was safe for consumption by pets.

60. The pet food manufactured by defendants was not safe for consumption by pets. The food caused animals to become sick and caused some animals to die. Once Plaintiffs and the Plaintiff Class learned of the tainted nature of the food, the food could not be used for its intended use.

61. The unsafe products in the pet food constituted a breach of contract. Plaintiffs and the Plaintiff Class performed all obligations required to be performed by them under the terms of the contracts. Defendants uniformly breached the contracts by failing to provide safe pet food.

62. As a direct, proximate and legal result of defendants' breach of the contracts, Plaintiffs and the Plaintiff Class have been, and continue to be damaged, in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Negligence)
(By Plaintiffs and the Plaintiff Class against all defendants)

63. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

64. As a manufacturer and producer of pet food, defendants owed a duty of care to Plaintiffs and the Plaintiff Class. A manufacturer of pet food must use ordinary care to avoid the use of contaminants in the pet food which will cause harm to the pets who

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consume the food. When a manufacturer of pet food knows or reasonably should know there are contaminants in pet food which may cause harm to those who consume the pet food, the manufacturer has a duty to immediately notify all owners and guardians of companion pets that the pet food is contaminated.

65. Defendants, by allowing contaminants in food which could cause harm to pets, and by failing to timely recall pet food when they knew or should have known that the pet food could reasonably cause harm those who consume the food, breached their duty of care.

66. As a direct and proximate result of the aforementioned conduct of defendants, Plaintiffs and the Plaintiff Class have suffered, and will continue to suffer in the future, general and special damages, including but not limited to the cost to replace pet food which was purchased but could not be used, past and future medical expenses for pets who were harmed by the tainted pet food, the value of pets who died as a result of consuming the tainted food, including without limitation the intrinsic value to Plaintiffs and the Plaintiff Class, burial expenses for pets who died as a result of consuming the tainted pet food, and the cost to replace the pets who died.

67. California Civil Code section 3340 provides for exemplary damages for "wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity." Based on the above alleged facts and Civil Code section 3340, defendants' conduct and actions were despicable, and were done with a willful and conscious disregard of the rights of Plaintiffs and the Plaintiff Class, thereby subjecting Plaintiffs and the Plaintiff Class to unjust hardship and distress. As to defendants, the officers, directors and managing agents were personally involved in the decision-making process with respect to the misconduct alleged herein and to be proven at trial.

68. As to the conduct alleged herein to have been engaged in by representatives of defendants, and each of them, the officers, directors and managing agents authorized and ratified each and every act on which Plaintiffs and the Plaintiff Class' allegations of punitive damages herein are based. On that basis, pursuant to Civil Code section 3340, Plaintiffs and

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the Plaintiff Class are entitled to an award of exemplary and punitive damages in an amount adequate to make an example of, and to punish and deter, defendants, and each of them.

THIRD CAUSE OF ACTION
(Negligence *Per Se*)
(By Plaintiffs and the Plaintiff Class against all defendants)

69. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

70. Defendants manufactured and produced pet food for sale within the State of California, and therefore, are among those persons and entities regulated by the Department of Food and Agriculture of California, the California Health and Safety Code and other applicable laws, rules and regulations, including but not limited to the Pure Pet Food Act of 1969.

71. The Pure Pet Food Act of 1969 prohibits the "causing thereof within the State of California . . . . [the] sale, or delivery, holding or offering for sale of any pet food ingredient or processed pet food that is adulterated or misbranded." (Health and Safety Code section 113075.) For purposes of this Act, a "pet food ingredient or a processed pet food shall be deemed to be adulterated: (a) If it bears or contains any poisonous or deleterious substance that may render it injurious to health . . . . [or] (b) If it bears or contains any added poisonous or deleterious substance, any food additive, any pesticide chemical . . . . [or] (d) If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health. . . . [or] (h) If damage or inferiority has been concealed in any manner." (Health and Safety Code section 113090.)

72. Plaintiffs and the Plaintiff Class are members of the class of persons intended to be protected by the Pure Pet Food Act of 1969.

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73. At all relevant times, defendants violated their statutory duty under the Pure Pet Food Act of 1969 by causing the sale, delivery, and holding in the State of California of adulterated pet food.

74. As a direct and proximate result of the aforementioned conduct of defendants, Plaintiffs and the Plaintiff Class have suffered, and will continue to suffer in the future, general and special damages, including but not limited to the cost to replace pet food which was purchased but could not be used, past and future medical expenses for pets who were harmed by the tainted pet food, the value of pets who died as a result of consuming the tainted food, including without limitation the intrinsic value to Plaintiffs and the Plaintiff Class, burial expenses for pets who died as a result of consuming the tainted pet food, and the cost to replace the pets who died.

75. California Civil Code section 3340 provides for exemplary damages for "wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity." Based on the above alleged facts and Civil Code section 3340, defendants' conduct and actions were despicable, and were done with a willful and conscious disregard of the rights of Plaintiffs and the Plaintiff Class, thereby subjecting Plaintiffs and the Plaintiff Class to unjust hardship and distress. As to defendants, the officers, directors and managing agents were personally involved in the decision-making process with respect to the misconduct alleged herein and to be proven at trial.

76. As to the conduct alleged herein to have been engaged in by representatives of defendants, and each of them, the officers, directors and managing agents authorized and ratified each and every act on which Plaintiffs and the Plaintiff Class' allegations of punitive damages herein are based. On that basis, pursuant to Civil Code section 3340, Plaintiffs and the Plaintiff Class are entitled to an award of exemplary and punitive damages in an amount adequate to make an example of, and to punish and deter, defendants, and each of them.

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FOURTH CAUSE OF ACTION
(Trespass to Chattels)
(By Plaintiffs and the Plaintiff Class against all defendants)

77. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

78. Plaintiffs and the Plaintiff Class possessed certain pets who are the subject of this lawsuit.

79. Defendants interfered with Plaintiffs and the Plaintiff Class' use or possession of the pets and caused harm to the pets.

80. Plaintiffs and the Plaintiff Class did not consent to this trespass.

81. Plaintiffs and the Plaintiff Class were harmed.

82. Defendants' conduct was a substantial factor in causing harm to Plaintiffs and the Plaintiff Class.

83. As a direct and proximate result of the aforementioned conduct of defendants, Plaintiffs and the Plaintiff Class have suffered, and will continue to suffer in the future, general and special damages, including but not limited to the cost to replace pet food which was purchased but could not be used, past and future medical expenses for pets who were harmed by the tainted pet food, the value of pets who died as a result of consuming the tainted food, including without limitation the intrinsic value to Plaintiffs and the Plaintiff Class, burial expenses for pets who died as a result of consuming the tainted pet food, and the cost to replace the pets who died.

84. California Civil Code section 3340 provides for exemplary damages for "wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity." Based on the above alleged facts and Civil Code section 3340, defendants' conduct and actions were despicable, and were done with a willful and conscious disregard of the rights of Plaintiffs and the Plaintiff Class, thereby subjecting Plaintiffs and the Plaintiff Class to unjust hardship and distress. As to defendants, the

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officers, directors and managing agents were personally involved in the decision-making process with respect to the misconduct alleged herein and to be proven at trial.

85. As to the conduct alleged herein to have been engaged in by representatives of defendants, and each of them, the officers, directors and managing agents authorized and ratified each and every act on which Plaintiffs and the Plaintiff Class' allegations of punitive damages herein are based. On that basis, pursuant to Civil Code section 3340, Plaintiffs and the Plaintiff Class are entitled to an award of exemplary and punitive damages in an amount adequate to make an example of, and to punish and deter, defendants, and each of them.

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)
(By Plaintiffs only against all defendants)

86. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves only.

87. The conduct of defendants as alleged herein was extreme and outrageous, going beyond all bounds of common decency so as to be regarded as atrocious and utterly intolerable in a civilized society. Defendants conduct, which included the intentional decision not to inform consumers that pet food was poisoned, was intentional or done with reckless disregard to Plaintiffs and their companion pets.

88. The severe and extreme emotional distress which Plaintiffs suffered, and continue to suffer, as a result of the acts and omissions of the defendants was and is far from trivial or transitory, and was and is of such substantial quantity and enduring quality that no reasonable person should be expected to endure it.

89. As a direct and proximate result of the aforementioned conduct of defendants, Plaintiffs and the Plaintiff Class have suffered, and will continue to suffer in the future, general and special damages, including but not limited to the cost to replace pet food which was purchased but could not be used, past and future medical expenses for pets who were harmed by the tainted pet food, the value of pets who died as a result of consuming the

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tainted food, including without limitation the intrinsic value to Plaintiffs and the Plaintiff Class, burial expenses for pets who died as a result of consuming the tainted pet food, and the cost to replace the pets who died.

90. California Civil Code section 3340 provides for exemplary damages for "wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity." Based on the above alleged facts and Civil Code section 3340, defendants' conduct and actions were despicable, and were done with a willful and conscious disregard of the rights of Plaintiffs, thereby subjecting Plaintiffs to unjust hardship and distress. As to defendants, the officers, directors and managing agents were personally involved in the decision-making process with respect to the misconduct alleged herein and to be proven at trial.

91. As to the conduct alleged herein to have been engaged in by representatives of defendants, and each of them, the officers, directors and managing agents authorized and ratified each and every act on which Plaintiffs' allegations of punitive damages herein are based. On that basis, pursuant to Civil Code section 3340, Plaintiffs are entitled to an award of exemplary and punitive damages in an amount adequate to make an example of, and to punish and deter, defendants, and each of them.

SIXTH CAUSE OF ACTION
(Fraudulent Concealment)
(By Plaintiffs and the Plaintiff Class against all defendants)

92. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

93. Between at least the end of February 2007 and March 16, 2007, Defendants concealed the fact that pet food was tainted and could cause significant harm, including death, to pets who consumed the pet food.

94. Defendants were obligated to inform Plaintiffs and the Plaintiff Class of the tainted nature of the pet food and acted intentionally and recklessly in failing to inform

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Plaintiffs and the Plaintiff Class of the tainted nature of the pet food prior to March 16, 2007.

95. The fact that defendants' pet food was not fit for consumption was a material fact to Plaintiffs and the Plaintiff Class.

96. Plaintiffs and the Plaintiff Class did not know of the concealed fact until defendants belatedly recalled the pet food.

97. Defendants intended to deceive Plaintiffs and the Plaintiff Class by concealing the existence of the tainted pet food.

98. Plaintiffs and the Plaintiff Class were harmed by defendants' conduct.

99. Defendants' concealment was a substantial factor in causing harm to Plaintiffs and the Plaintiff Class.

100. As a direct and proximate result of the aforementioned conduct of defendants, Plaintiffs and the Plaintiff Class have suffered, and will continue to suffer in the future, general and special damages, including but not limited to the cost to replace pet food which was purchased but could not be used, past and future medical expenses for pets who were harmed by the tainted pet food, the value of pets who died as a result of consuming the tainted food, including without limitation the intrinsic value to Plaintiffs and the Plaintiff Class, burial expenses for pets who died as a result of consuming the tainted pet food, and the cost to replace the pets who died.

101. California Civil Code section 3340 provides for exemplary damages for "wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity." Based on the above alleged facts and Civil Code section 3340, defendants' conduct and actions were despicable, and were done with a willful and conscious disregard of the rights of Plaintiffs and the Plaintiff Class, thereby subjecting Plaintiffs and the Plaintiff Class to unjust hardship and distress. As to defendants, the officers, directors and managing agents were personally involved in the decision-making process with respect to the misconduct alleged herein and to be proven at trial.

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102. As to the conduct alleged herein to have been engaged in by representatives of defendants, and each of them, the officers, directors and managing agents authorized and ratified each and every act on which Plaintiffs and the Plaintiff Class' allegations of punitive damages herein are based. On that basis, pursuant to Civil Code section 3340, Plaintiffs and the Plaintiff Class are entitled to an award of exemplary and punitive damages in an amount adequate to make an example of, and to punish and deter, defendants, and each of them.

SEVENTH CAUSE OF ACTION
(Strict Products Liability)
(By Plaintiffs and the Plaintiff Class against all defendants)

103. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

104. Defendants are in the business of manufacturing, producing, distributing, supplying, testing, inspecting, packaging, labeling, analyzing, merchandising, recommending, advertising, promoting, marketing and/or selling the pet food at issue in this lawsuit directly to businesses and to the general public.

105. Defendants intended and knew, or in the exercise of reasonable care should have known, that the pet food at issue in this lawsuit was to be purchased and used by members of the general public.

106. Ordinary consumers such as Plaintiffs and the Plaintiff Class would not have recognized the potential danger of the pet food.

107. Defendants intended and knew, or in the exercise of reasonable care should have known, that the pet food at issue in this lawsuit was a product of such a nature that if it was not properly manufactured, produced, tested, inspected, and analyzed for the use and purpose for which it was intended, and if it was contaminated with substances which are poisonous to pets, then it was likely to cause harm to the general public including Plaintiffs and the Plaintiff Class.

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108. The pet food was defective and defendants knew, or in the exercise of reasonable care should have known, that said pet food was defective and dangerous because it was negligently and carelessly manufactured, produced, tested, inspected, and analyzed as herein above alleged. Notwithstanding this knowledge, defendants placed said pet food into the stream of commerce, willfully concealing the defects from Plaintiffs and the Plaintiff Class. Further, defendants knew that, because of the aforementioned defects, the pet food was unfit for its intended use, and in all likelihood would cause damage, including death or illness to pets who consumed the pet food, to purchasers and users, and yet, notwithstanding this knowledge, without giving any notice of the defects to the purchasers or users, placed and persisted in placing the herein described defective pet food into the stream of commerce, causing it to be sold to Plaintiffs and the Plaintiff Class and then consumed by pets.

109. The defective character and condition of the pet food was known to defendants, or in the exercise of ordinary care should have been known and discovered by them. Furthermore, the defective character and condition of the pet food was not made known to Plaintiffs and the Plaintiff Class on a timely basis. Plaintiffs and the Plaintiff Class did not learn of the defects until defendants recalled the pet food, and even then Plaintiffs and the Plaintiff Class still have not learned the true nature of the defects or exactly what food was contaminated.

110. Plaintiffs are informed and believe and thereon allege that the damages suffered by plaintiffs are a result of the defective pet food as stated herein were directly and proximately caused by defendants' conduct and failures.

111. As a direct and proximate result of the aforementioned conduct of defendants, Plaintiffs and the Plaintiff Class have suffered, and will continue to suffer in the future, general and special damages, including but not limited to the cost to replace pet food which was purchased but could not be used, past and future medical expenses for pets who were harmed by the tainted pet food, the value of pets who died as a result of consuming the tainted food, including without limitation the intrinsic value to Plaintiffs and the Plaintiff

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Class, burial expenses for pets who died as a result of consuming the tainted pet food, and the cost to replace the pets who died.

112. California Civil Code section 3340 provides for exemplary damages for "wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity." Based on the above alleged facts and Civil Code section 3340, defendants' conduct and actions were despicable, and were done with a willful and conscious disregard of the rights of Plaintiffs and the Plaintiff Class, thereby subjecting Plaintiffs and the Plaintiff Class to unjust hardship and distress. As to defendants, the officers, directors and managing agents were personally involved in the decision-making process with respect to the misconduct alleged herein and to be proven at trial.

113. As to the conduct alleged herein to have been engaged in by representatives of defendants, and each of them, the officers, directors and managing agents authorized and ratified each and every act on which Plaintiffs and the Plaintiff Class' allegations of punitive damages herein are based. On that basis, pursuant to Civil Code section 3340, Plaintiffs and the Plaintiff Class are entitled to an award of exemplary and punitive damages in an amount adequate to make an example of, and to punish and deter, defendants, and each of them.

EIGHTH CAUSE OF ACTION
(Breach of Warranties)
(By Plaintiffs and the Plaintiff Class against all defendants)

114. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

115. Defendants expressly and impliedly warranted to Plaintiffs and the Plaintiff Class that the pet food manufactured between December 3, 2006 and March 6, 2007, was safe for consumption by pets. Defendants also impliedly warranted to Plaintiffs and the Plaintiff Class that in the event that there were any problems with the pet food, defendants would immediately take all actions necessary to notify Plaintiffs and the Plaintiff Class of the problems with the pet food.

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116. As described more fully in this complaint, defendants breached the warranties described above.

117. When Plaintiffs and the Plaintiff Class purchased the pet food at issue in this lawsuit, Plaintiffs and the Plaintiff Class were acting in reliance upon these express and implied warranties.

118. As a direct and proximate result of the aforementioned conduct of defendants, Plaintiffs and the Plaintiff Class have suffered, and will continue to suffer in the future, general and special damages, including but not limited to the cost to replace pet food which was purchased but could not be used, past and future medical expenses for pets who were harmed by the tainted pet food, the value of pets who died as a result of consuming the tainted food, including without limitation the intrinsic value to Plaintiffs and the Plaintiff Class, burial expenses for pets who died as a result of consuming the tainted pet food, and the cost to replace the pets who died.

119. California Civil Code section 3340 provides for exemplary damages for "wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity." Based on the above alleged facts and Civil Code section 3340, defendants' conduct and actions were despicable, and were done with a willful and conscious disregard of the rights of Plaintiffs and the Plaintiff Class, thereby subjecting Plaintiffs and the Plaintiff Class to unjust hardship and distress. As to defendants, the officers, directors and managing agents were personally involved in the decision-making process with respect to the misconduct alleged herein and to be proven at trial.

120. As to the conduct alleged herein to have been engaged in by representatives of defendants, and each of them, the officers, directors and managing agents authorized and ratified each and every act on which Plaintiffs and the Plaintiff Class' allegations of punitive damages herein are based. On that basis, pursuant to Civil Code section 3340, Plaintiffs and the Plaintiff Class are entitled to an award of exemplary and punitive damages in an amount adequate to make an example of, and to punish and deter, defendants, and each of them.

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NINTH CAUSE OF ACTION
(Violation of Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.*)
(By Plaintiffs and the Plaintiff Class against all defendants)

121. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

122. Plaintiffs and the Plaintiff Class were and are "consumers" as that term is defined in Civil Code § 1761(d).

123. The transactions from which this action arises involved the sale of goods for primarily personal, family or household purposes with the meaning of Civil Code § 1761.

124. Defendants engaged in deceptive practices, unlawful methods of competition, and/or unfair acts as defined by Civil Code sections 1750, *et seq.*, to the detriment of Plaintiffs and the Plaintiff Class. The following deceptive practices have been intentionally, knowingly, and unlawfully perpetrated upon Plaintiffs and the Plaintiff Class by defendants:

(a) In violation of Civil Code section 1770(a)(5), defendants unlawfully, unfairly and deceptively misrepresented that the pet food had characteristics, ingredients, uses, benefits or qualities that it did not have;

(b) In violation of Civil Code section 1770(a)(7), defendants unlawfully, unfairly and deceptively represented that the pet food was of a particular standard, quality or grade when it was not;

(c) In violation of Civil Code section 1770(a)(16), defendants unlawfully, unfairly and deceptively represented that the pet food was supplied in accordance with a previous representation when it was not.

125. Plaintiffs and the Plaintiff Class request that this court enjoin defendants from continuing to engage in the unlawful and deceptive methods, acts and practices alleged above, pursuant to Code of Civil Procedure section 1780(a)(2). Unless defendants are permanently enjoined from continuing to engage in such violations of the Consumer Legal

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Remedies Act, future consumers of defendants' pet food will be damaged by the acts and practices in the same way as have Plaintiffs and the Plaintiff Class.

126. Plaintiffs and the Plaintiff Class are also entitled to an award of reasonable attorney's fees and costs pursuant to Civil Code § 1780(d).

TENTH CAUSE OF ACTION
(Violations of Business & Professions Code §§ 17500 *et seq.*)
(By Plaintiffs and the Plaintiff Class against all defendants)

127. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

128. Defendants placed pet food in stream of commerce, and represented that the pet food was safe for consumption after defendants reasonably knew or should have known that the pet food was not safe for consumption.

129. Defendants' representations to the general public that their pet food was safe, when in fact it was not, was untrue and/or misleading.

130. At the time defendants made and disseminated the statements alleged herein, defendants knew or should have known that the statements were untrue and/or misleading.

131. Plaintiffs, on behalf of themselves and the Plaintiff Class, seek restitution, disgorgement, injunctive relief, and all other relief permitted under Business & Professions Code §§ 17500 *et seq.*

ELEVENTH CAUSE OF ACTION
(Unfair Business Practices - Business & Professions Code §§17200, *et. seq.*)
(By Plaintiffs and the Plaintiff Class against all defendants)

132. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiffs assert this claim on behalf of themselves and on behalf of the Plaintiff Class.

133. Menu Foods has engaged in unfair, unlawful, and fraudulent business practices, as alleged herein, within the meaning of Business & Professions Code §§ 17200,

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et seq. Plaintiffs and the Plaintiff Class have suffered injuries in fact dues to defendants' improper business practices.

134. Defendants' business practices are unlawful, in part, because they constitute a violation of the Pure Pet Food Act of 1969, the California Consumer Legal Remedies Act, and the California False Advertising Act.

135. Defendants' business practices are unfair and fraudulent because defendants failed to test or analyze pet food before it was placed in the stream of commerce, failed to adequately test or analyze product they received from their suppliers prior to placing it into their manufactured product, and failed to reasonably and timely notify Plaintiff and the Plaintiff Class of the poisoned pet food.

136. Defendants' business practices are fraudulent, in part, because they deceived and misled Plaintiffs and the Plaintiff Class, who reasonably relied on defendants' promises and representations to their detriment and were proximately damaged by defendants' failure to provide safe pet food.

137. Plaintiffs and the Plaintiff Class are informed and believe and on that basis allege that the alleged unlawful practices are continuing in nature and are widespread practices that have deceived and are likely to deceive members of the consuming public.

138. As a direct result of defendants' unfair, unlawful, and fraudulent business practices Plaintiffs and the Plaintiff Class have suffered injuries in fact.

139. Plaintiffs, on behalf of themselves and the Plaintiff Class, seek an order awarding restitution, disgorgement, injunctive relief, and all other relief permitted under Business & Professions Code §§ 17200 *et seq.*, plus interest and attorney's fees and costs pursuant to, in part, Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Plaintiff Class, pray for relief as follows:

1. An order certifying this case as a class action;

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2. An order for compensatory, general and special damages;
3. An order permanently enjoining defendants and their agents, representatives, and employees from engaging in the unfair, unlawful, and fraudulent acts and business practices alleged herein;
4. An order requiring defendants to make restitution to Plaintiffs and the Plaintiff Class of any and all amounts collected through the unfair, unlawful, and fraudulent acts and business practices alleged herein;
5. For prejudgment interest as provided by law;
6. For an award of reasonable attorney's fees and costs incurred in the investigation, filing, and prosecution of this action as permitted by law, including, but not limited to, Civil Code § 1780(d) and/or Code of Civil Procedure § 1021.5;
7. For contract damages for Plaintiffs and for the Plaintiff Class as determined at trial;
8. For any and all other relief available under Business and Professions Code sections 17200 and 17500, *et. seq.*, including but not limited to disgorgement of profits received through defendants' unfair business practices and restitution;
9. For an order imposing a constructive trust upon all monies and assets defendants have acquired from Plaintiffs and the Plaintiff Class as a result of defendants' unlawful, unfair, fraudulent and deceptive practices;
10. For exemplary and punitive damages; and

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Sherman Oaks, CA 91403
(818) 990-1299

11. For such other and further relief as the Court deems just and proper.

DATED: April 5, 2007

PARISI & HAVENS LLP

By: ______________________
David C. Parisi
Suzanne Havens Beckman
Attorneys for plaintiffs Mitch and Jayne Englander, on behalf of themselves, the general public, all others similarly situated, and as owners and guardians of Sparky and Bailey

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(818) 990-1299

DEMAND FOR JURY TRIAL

Plaintiffs and the Plaintiff Class hereby demand a trial by jury of all claims and causes of action in this lawsuit.

DATED: April 5, 2007

PARISI & HAVENS LLP

By: ______________________

David C. Parisi
Suzanne Havens Beckman
Attorneys for plaintiffs Mitch and Jayne Englander, on behalf of themselves, the general public, all others similarly situated, and as owners and guardians of Sparky and Bailey

PARISI & HAVENS LLP
15233 Valleyheart Drive
Sherman Oaks, CA 91403
(818) 990-1299

I, Jayne Englander, hereby declare:

1. I have personal knowledge of the following facts and I can and will competently testify thereto.

2. I am a lead plaintiff in this lawsuit.

3. Defendants are doing business in the County of Los Angeles, State of California. The transaction or a substantial portion of the transaction which is the subject of this lawsuit occurred in the County of Los Angeles.

4. This action has been filed in Los Angeles County because this is the proper place for this type of case to be tried. The complaint alleges that defendants violated the laws of the State of California while doing business in the County of Los Angeles.

I declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct.

Executed this 4 day of April 2007, at [signature], California.

Janye Englander

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
David C. Parisi (SBN 162248)
Parisi & Havens LLP
15233 Valleyheart Drive
Sherman Oaks, California 91403
TELEPHONE NO.: (818) 990-1299 FAX NO.: (818) 501-7852
ATTORNEY FOR (Name): Plaintiffs

FOR COURT USE ONLY

FILED
LOS ANGELES SUPERIOR COURT
APR 05 2007
JOHN A. CLARKE, CLERK
BY EUGENA LOPEZ, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 N. Hill Street
MAILING ADDRESS: 111 N. Hill Street
CITY AND ZIP CODE: Los Angeles, California 90012
BRANCH NAME:

CASE NAME: Englander, et al. v. Menu Foods, et al.

CIVIL CASE COVER SHEET

[x] Unlimited (Amount demanded exceeds $25,000)
[ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: BC369097
JUDGE:
DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [x] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint (*not specified above*) (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition (*not specified above*) (43)

2. This case [x] is [ ] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [x] Large number of separately represented parties
   b. [x] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [x] Substantial amount of documentary evidence
   d. [x] Large number of witnesses
   e. [x] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Type of remedies sought (*check all that apply*):
   a. [x] monetary b. [ ] nonmonetary; declaratory or injunctive relief c. [x] punitive
4. Number of causes of action (*specify*): Eleven: (1) breach of contract, (2) negligence, (3) negligence per se, etc.
5. This case [x] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: April 5, 2007
David C. Parisi (SBN 162248)
(TYPE OR PRINT NAME)
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. January 1, 2007]

CIVIL CASE COVER SHEET

Legal Solutions Plus

Cal. Rules of Court, rules 3.220, 3.400–3.403; Standards of Judicial Administration, § 19

SHORT TITLE: Englander, et al v. Menu Foods, et al. | CASE NUMBER BC369097

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? [X] YES CLASS ACTION? [X] YES LIMITED CASE? [ ] YES TIME ESTIMATED FOR TRIAL 25 [ ] HOURS/ [X] DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county or no Bodily Injury/Property Damage).
3. Location where cause of action arose
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	[ ] A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Auto Tort	Uninsured Motorist (46)	[ ] A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	[ ] A6070 Asbestos Property Damage [ ] A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	[X] A7260 Product Liability (not asbestos or toxic/environmental)	1., (2.), 3., 4., 8.
	Medical Malpractice (45)	[ ] A7210 Medical Malpractice - Physicians & Surgeons [ ] A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	[ ] A7250 Premises Liability (e.g., slip and fall) [ ] A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) [ ] A7270 Intentional Infliction of Emotional Distress [ ] A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
Non Personal Injury Property Damage/Wrongful Death Tort	Business Tort (07)	[ ] A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	[ ] A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	[ ] A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	[ ] A6013 Fraud (no contract)	1., 2., 3.

SHORT TITLE: Englander, et a. . v. Menu Foods, et al. | CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/ Wrongful Death Tort (Cont'd.)	Professional Negligence (25)	☐ A6017 Legal Malpractice	1., 2., 3.
		☐ A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
	Other (35)	☐ A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	☐ A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	☐ A6024 Other Employment Complaint Case	1., 2., 3.
		☐ A6109 Labor Commissioner Appeals	10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	☐ A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
		☐ A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
		☐ A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
		☐ A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
	Collections (09)	☐ A6002 Collections Case-Seller Plaintiff	2., 5., 6.
		☐ A6012 Other Promissory Note/Collections Case	2., 5.
	Insurance Coverage (18)	☐ A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	☐ A6009 Contractual Fraud	1., 2., 3., 5.
		☐ A6031 Tortious Interference	1., 2., 3., 5.
		☐ A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Real Property	Eminent Domain/Inverse Condemnation (14)	☐ A7300 Eminent Domain/Condemnation Number of parcels ______	2.
	Wrongful Eviction (33)	☐ A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	☐ A6018 Mortgage Foreclosure	2., 6.
		☐ A6032 Quiet Title	2., 6.
		☐ A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer	Unlawful Detainer - Commercial (31)	☐ A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer - Residential (32)	☐ A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer - Drugs (38)	☐ A6022 Unlawful Detainer-Drugs	2., 6.
Judicial Review	Asset Forfeiture (05)	☐ A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	☐ A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

CV07- 2964 CAS (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself [ ])
JAYNE ENGLANDER, an individual, and MITCHELL ENGLANDER, etc.

DEFENDANTS
MENU FOODS INCOME FUND, etc., et al.

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Attorneys (If Known)
Gina E. Och (SBN 170520)
MURCHISON & CUMMING, LLP
801 South Grand Avenue, 9th Floor
Los Angeles, CA 90017
Tele: (213) 623-7400
Fax: (213) 623-6336

II. BASIS OF JURISDICTION (Place an X in one box only.)

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [X] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	[X] 1	[ ] 1	Incorporated or Principal Place of Business in this State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated and Principal Place of Business in Another State	[ ] 5	[X] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. ORIGIN (Place an X in one box only.)

[ ] 1 Original Proceeding [X] 2 Removed from State Court [ ] 3 Remanded from Appellate Court [ ] 4 Reinstated or Reopened [ ] 5 Transferred from another district (specify): [ ] 6 Multi-District Litigation [ ] 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: [X] Yes [ ] No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: [ ] Yes [ ] No [X] **MONEY DEMANDED IN COMPLAINT: $** 5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. sections 1332, 1441 and 1446. This is a diversity action.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
[ ] 400 State Reapportionment
[ ] 410 Antitrust
[ ] 430 Banks and Banking
[ ] 450 Commerce/ICC Rates/etc.
[ ] 460 Deportation
[ ] 470 Racketeer Influenced and Corrupt Organizations
[ ] 480 Consumer Credit
[ ] 490 Cable/Sat TV
[ ] 810 Selective Service
[ ] 850 Securities/Commodities/Exchange
[ ] 875 Customer Challenge 12 USC 3410
[ ] 890 Other Statutory Actions
[ ] 891 Agricultural Act
[ ] 892 Economic Stabilization Act
[ ] 893 Environmental Matters
[ ] 894 Energy Allocation Act
[ ] 895 Freedom of Info. Act
[ ] 900 Appeal of Fee Determination Under Equal Access to Justice
[ ] 950 Constitutionality of State Statutes

CONTRACT
[ ] 110 Insurance
[ ] 120 Marine
[ ] 130 Miller Act
[ ] 140 Negotiable Instrument
[ ] 150 Recovery of Overpayment & Enforcement of Judgment
[ ] 151 Medicare Act
[ ] 152 Recovery of Defaulted Student Loan (Excl. Veterans)
[ ] 153 Recovery of Overpayment of Veteran's Benefits
[ ] 160 Stockholders' Suits
[ ] 190 Other Contract
[ ] 195 Contract Product Liability
[ ] 196 Franchise

REAL PROPERTY
[ ] 210 Land Condemnation
[ ] 220 Foreclosure
[ ] 230 Rent Lease & Ejectment
[ ] 240 Torts to Land
[ ] 245 Tort Product Liability
[ ] 290 All Other Real Property

TORTS PERSONAL INJURY
[ ] 310 Airplane
[ ] 315 Airplane Product Liability
[ ] 320 Assault, Libel & Slander
[ ] 330 Fed. Employers' Liability
[ ] 340 Marine
[ ] 345 Marine Product Liability
[ ] 350 Motor Vehicle
[ ] 355 Motor Vehicle Product Liability
[ ] 360 Other Personal Injury
[ ] 362 Personal Injury-Med Malpractice
[X] 365 Personal Injury-Product Liability
[ ] 368 Asbestos Personal Injury Product Liability

TORTS PERSONAL PROPERTY
[ ] 370 Other Fraud
[ ] 371 Truth in Lending
[ ] 380 Other Personal Property Damage
[ ] 385 Property Damage Product Liability

BANKRUPTCY
[ ] 422 Appeal 28 USC 158
[ ] 423 Withdrawal 28 USC 157

CIVIL RIGHTS
[ ] 441 Voting
[ ] 442 Employment
[ ] 443 Housing/Accommodations
[ ] 444 Welfare
[ ] 445 American with Disabilities - Employment
[ ] 446 American with Disabilities - Other
[ ] 440 Other Civil Rights

PRISONER PETITIONS
[ ] 510 Motions to Vacate Sentence Habeas Corpus
[ ] 530 General
[ ] 535 Death Penalty
[ ] 540 Mandamus/Other
[ ] 550 Civil Rights
[ ] 555 Prison Condition

FORFEITURE/PENALTY
[ ] 610 Agriculture
[ ] 620 Other Food & Drug
[ ] 625 Drug Related Seizure of Property 21 USC 881
[ ] 630 Liquor Laws
[ ] 640 R.R. & Truck
[ ] 650 Airline Regs
[ ] 660 Occupational Safety/Health
[ ] 690 Other

LABOR
[ ] 710 Fair Labor Standards Act
[ ] 720 Labor/Mgmt. Relations
[ ] 730 Labor/Mgmt. Reporting & Disclosure Act
[ ] 740 Railway Labor Act
[ ] 790 Other Labor Litig.
[ ] 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
[ ] 820 Copyrights
[ ] 830 Patent
[ ] 840 Trademark

SOCIAL SECURITY
[ ] 861 HIA (1395ff)
[ ] 862 Black Lung (923)
[ ] 863 DIWC/DIWW (405(g))
[ ] 864 SSID Title XVI
[ ] 865 RSI (405(g))

FEDERAL TAX SUITS
[ ] 870 Taxes (U.S. Plaintiff or Defendant)
[ ] 871 IRS - Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? [X] No [ ] Yes
If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number:

CV07-2964

ATTACHMENT TO CIVIL COVER SHEET

IX. VENUE: List the California County, or State if other than California, in which EACH named defendant resides.

1. Defendant MENU FOODS INCOME FUND, Ontario, Canada
2. Defendant MENU FOODS OPERATING TRUST, Ontario, Canada
3. Defendant MENU FOODS LIMITED PARTNERSHIP, Ontario, Canada
4. Defendant MENU FOODS ACQUISITION, INC., Ontario, Canada
5. Defendant MENU FOODS LIMITED, Ontario, Canada
6. Defendant MENU FOODS HOLDINGS, INC., Delaware
7. Defendant MENU FOODS, INC., New Jersey
8. Defendant MENU FOODS MIDWEST CORPORATION, Delaware

J:\GEO\Menu Foods\Englander\ATTACHMENT-CIVIL COVER SHEET

UNITED ST[redacted]DISTRICT COURT, CENTRAL DISTRICT [redacted]LIFORNIA

CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? [ ] No [X] Yes

If yes, list case number(s): SEE CONCURRENTLY-FILED NOTICE OF RELATED CASES

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) [X] A. Arise from the same or closely related transactions, happenings, or events; or

[X] B. Call for determination of the same or substantially related or similar questions of law and fact; or

[X] C. For other reasons would entail substantial duplication of labor if heard by different judges; or

[ ] D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

[ ] Check here if the U.S. government, its agencies or employees is a named plaintiff.

Plaintiff, JAYNE ENGLANDER, County of Los Angeles

Plaintiff, MITCH ENGLANDER, County of Los Angeles

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

[ ] Check here if the U.S. government, its agencies or employees is a named defendant.

SEE ATTACHED ADDITIONAL SHEET

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

County of Los Angeles

X. SIGNATURE OF ATTORNEY (OR PRO PER): Gina Och **Date** April 11, 2007

GINA E. OCH

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))